IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1655/2006
(Mahesh Chandra Vs. State of Rajasthan)

Date of Order : 20/12/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Ramesh Purohit for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

Issue notice for final disposal. Public prosecutor accepts the notice for the State.

With the consent of learned counsel for the parties, the matter is finally heard and disposed of at the admission stage.

By the instant criminal misc. petition under Section 482 Cr.P.C. the petitioner has challenged the order dated 11.12.2006 passed by Additional Chief Judicial Magistrate, Pratapgarh, district Chittorgarh (for short 'the trial court' hereinafter) whereby while allowing the application filed by the petitioner under Section 451 Cr.P.C. seeking interim custody of the cash amount of Rs.6,95,000/-, directed that the amount be

handed over to the petitioner provided the petitioner furnishes a bank guarantee of Rs. 6,95,000/- for a period of six months.

From the perusal of the order impugned, it appears that except the petitioner, there is no one to claim the amount including the income tax authorities. The income tax authorities were heard by the trial court and the income tax authorities came with a case that there is no matter under Section 132-A of the Income Tax Act and therefore, income tax has no objection if the amount is returned to the petitioner. Even otherwise, from the income tax returns filed by the petitioner, the amount as stated by the learned counsel for the petitioner has been accounted for and therefore, it cannot be said that the amount seized by the police under Section 102 Cr.P.C. is undisclosed amount. In the circumstances, therefore, the trial court fell in error in imposing the condition of bank guarantee.

In the result, the order impugned dated 11.12.2006 passed by the trial court is modified to the extent that instead of furnishing bank guarantee for a sum of Rs. 6,95,000/- for six months, the petitioner shall furnish solvent security for the same to the satisfaction of the trial court.

The criminal misc. petition is accordingly disposed of.

(H.R.PANWAR),J.

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